

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

THURMOND McMICHAEL,  
Plaintiff

v.

ANDREW PALLITO, ROBERT KUPEC,  
JAY SIMONS, PHIL FERNANDEZ,  
STAN MORSE, DAVID BULEY,  
STEPHEN McCARTHY and  
BARBARA LESTER,  
Defendants

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

File No. 1:09-cv-00130-jgm-jmc

ORDER

The Magistrate Judge's Report and Recommendation was filed January 27, 2011. (Doc. 65.) After de novo review and over objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1).

Defendants' Motion for Summary Judgment (Doc. 59) is GRANTED in part and DENIED in part. Specifically, all claims for damages against Defendants in their official capacities are DISMISSED. Because Plaintiff has failed to demonstrate a physical injury, all claims for compensatory damages are DISMISSED. Further, the Court finds there is no basis for an award of punitive damages; therefore, claims for such damages are DISMISSED as a matter of law.

All claims brought against Defendants Pallito and Kupec in their individual capacities are DISMISSED for lack of personal involvement. Plaintiff's claims relating to the lack of running water and adequate heat, his placement in close custody, and the

Department of Corrections' failure to report and investigate a hate crime are  
DISMISSED. Defendants' Motion for Summary Judgment is otherwise DENIED.

Plaintiff's Motion for Summary Judgment (Doc. 58) is DENIED as to all claims to  
which Defendants are entitled to summary judgment. As to the sole remaining claim –  
the question of Plaintiff's access to a religiously appropriate diet – Plaintiff's motion is  
DENIED without prejudice. Motions for summary judgment as to this claim shall be filed  
on or before April 22, 2011.

This matter is returned to Magistrate Judge John M. Conroy for further  
proceedings.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 24<sup>th</sup> day of March, 2011.

/s/ J. Garvan Murtha

Honorable J. Garvan Murtha  
Senior United States District Judge